

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, RENAMING CHAPTER 8.09 OF THE CARLSBAD MUNICIPAL CODE FROM CABARET DANCES TO ENTERTAINMENT ESTABLISHMENTS, REPEALING CARLSBAD MUNICIPAL CODE SECTIONS 8.09.011 THROUGH 8.09.017 RELATING TO CABARET DANCES AND ADDING SECTIONS 8.09.010 THROUGH 8.09.017 TO THE CARLSBAD MUNICIPAL CODE RELATING TO ENTERTAINMENT ESTABLISHMENTS

WHEREAS, the City of Carlsbad has received numerous complaints from neighbors concerning cabarets, commercial and dining establishments that serve alcoholic beverages ("Drinking") onsite and provide entertainment regarding excessive noise and disorderly conduct, including assault and battery; and

WHEREAS, the City does not currently regulate the exterior noise levels of cabarets, commercial or dining establishments that provide Drinking and entertainment; and

WHEREAS, excessive noise levels and disorderly conduct is detrimental to the peaceful and quiet use and enjoyment of residents and businesses adjacent to cabarets or commercial establishments that provide Drinking and entertainment; and

WHEREAS, the City has observed numerous violations of the established occupancy load in cabarets and commercial establishments that provide Drinking and entertainment; and

WHEREAS, the City has not gained compliance with the safe occupant load limits through voluntary compliance from the owners and managers of cabarets and commercial establishments that provide Drinking and entertainment; and

WHEREAS, the entertainment provided at such cabarets and commercial establishments that provide Drinking and entertainment makes the establishment a likely place for overcrowding to occur; and

WHEREAS, the City has a duty and a desire to enforce the State Fire and Building Codes as it relates to the safe occupant loads as authorized in state and local laws; and

WHEREAS, it is the intent of this Entertainment Ordinance, upon its adoption, to be prospective in its application;

WHEREAS, those entities or persons holding a valid annual Cabaret permit issued by the City of Carlsbad for an establishment within the City of Carlsbad shall not be subject to this Entertainment Ordinance, until such annual Cabaret permit expires or is revoked.

THEREFORE, the City Council of the City of Carlsbad, California, does ordain as follows:

SECTION 1: That Chapter 8.09 of the Carlsbad Municipal Code is amended by renaming the title "Cabaret Dances" to read as follows:

Chapter 8.09

Entertainment Establishments

SECTION 2: That Chapter 8.09 of the Carlsbad Municipal Code is amended by repealing Sections 8.09.011 through 8.09.017.

8.09.011 Cabaret dance.

8.09.012 Cabaret dances--Requirements.

8.09.013 Permit and fee.

8.09.014 Cabaret permit.

8.09.015 Prohibited conduct at cabaret dances--Disorderly conduct.

8.09.016 Revocation of permit.

8.09.017 Cabaret dance--Guidelines.

* Prior ordinance history: Ords. 6047 and 6051.

8.09.011 Cabaret dance.

"Cabaret dance" means any dance conducted in a commercial establishment open to the public where alcoholic beverages are regularly sold or otherwise distributed, except for any dance which falls within this definition but is also regulated under Chapter 8.60. Activities which fall within the scope of Chapter 8.60 (performances at adult businesses) are not "cabaret dances" within the meaning of this section and are not regulated under Chapter 8.09. (Ord. NS-761 § 5, 2005)

8.09.012 Cabaret dances--Requirements.

No person shall conduct a cabaret dance unless all of the following conditions are at all times complied with:

(1) Size of Dance Floor. The dance floor shall be a minimum size of one hundred square feet.

(2) Designation of Dance Floor. The dance floor area shall be plainly marked and designated as a dancing area. No dancing shall be permitted in the premises except upon the dancing area thus marked and designated.

(3) Permit Restrictions. During all hours during which dancing is permitted by the permit issued hereunder for the premises, no portion of the dancing area shall be used for any purpose other than dancing and entertainment.

(4) Maximum Number of Patrons. The maximum number of persons, other than employees, shall not at any one time exceed the maximum occupant load as determined by the fire marshal or the designated city building official. (Ord. NS-369 § 1 (part), 1996)

8.09.013 Permit and fee.

No person shall conduct a cabaret dance without first obtaining a permit from the city. The permit fee shall be established by resolution of the city council. (Ord. NS-369 § 1 (part), 1996)

8.09.014 Cabaret permit.

The community development director or his designee shall grant an application, upon request for issuance of a permit within thirty days after filing of a complete application unless one or more of the following findings are made:

(1) The building, structure, equipment or location of such business in which the dancing is to be conducted does not comply with or fails to meet all of the health, zoning, fire, building, or safety regulations and standards of the state of California as well as ordinances of the city applicable to same.

(2) The applicant or agent, has knowingly or deliberately made any false, misleading, or fraudulent statement of material facts in the application or in any report or record required to be filed or kept under the provisions of the Carlsbad ordinances. (Ord. NS-369 § 1 (part), 1996)

8.09.015 Prohibited conduct at cabaret dances--Disorderly conduct.

No person conducting a cabaret dance shall permit any person to enter into, or to remain on the premises where such cabaret dance is conducted, who is obviously intoxicated, boisterous or disorderly. (Ord. NS-369 § 1 (part), 1996)

8.09.016 Revocation of permit.

(a) No person shall operate any place for which a permit is required under this chapter contrary to the provisions of this chapter, or contrary to any regulation is adopted by the city council as may be reasonably necessary to protect the public peace, health, safety or morals. The city council may, upon the recommendation of the police department and/or code enforcement officer, at any time revoke any permit issued under this chapter for any violations thereof. No such permit shall be revoked without a noticed hearing.

(b) A citation may be issued to the responsible party for violations of the requirements of this section. Each violation of this chapter is subject to the penalties set forth in Chapter 1.08 of this code. (Ord. NS-369 § 1 (part), 1996)

8.09.017 Cabaret dance--Guidelines.

The city manager or his designee may adopt guidelines to administer this chapter. (Ord. NS-369 § 1 (part), 1996)

SECTION 3: That Chapter 8.09 of the Carlsbad Municipal Code is amended by adding Sections 8.09.010 through 8.09.170 to read as follows:

8.09.010	Purpose
8.09.020	Definitions
8.09.030	Entertainment License Required
8.09.040	Exemption from the Entertainment License Requirement
8.09.050	No Renewal of Cabaret License
8.09.060	Application Procedure for an Entertainment License
8.09.070	Application Fee for an Entertainment License
8.09.080	Approval of License
8.09.090	Standard License Conditions
8.09.100	Class II Entertainment Establishment Standards
8.09.110	Chief of Police Authority Where There is Immediate Threat to Public Safety
8.09.120	Discretionary Permit Conditions
8.09.130	Term of License
8.09.140	Revocation/Suspension for Violation
8.09.150	Appeal Procedure
8.09.160	Severability
8.09.170	Violation—Penalty

8.09.010 Purpose

The City of Carlsbad encourages the development of arts and culture and recognizes that having many entertainment establishments provides a means for such activity. The City of Carlsbad further recognizes that having a variety of entertainment types in the City promotes a rich and diverse cultural experience.

The City of Carlsbad also recognizes that Entertainment Establishments serving alcohol have demonstrated the potential for creating an environment where various types of disturbances, excessive noise, and disorderly conduct by inebriated patrons may occur. These negative effects are adverse to the public safety and the quality of life in the community.

The purpose of this Chapter is to regulate the operation of Entertainment Establishments so as to minimize the negative effects and to preserve the public safety, health and welfare. It is not the City's intent to regulate or restrict the type or content of entertainment provided in those establishments. All licensees will be responsible for controlling patron conduct in and around their Entertainment Establishment, making adequate provisions for security and crowd control, compliance with state and local laws and minimizing disturbances caused by the operation of an Entertainment Establishment.

It is also the intent of the City of Carlsbad to provide alternatives to the regulating of Entertainment Establishments by imposing license conditions tailored to the particular Entertainment Establishment.

8.09.20 Definitions

For purposes of this Chapter the following words and phrases shall have the following meanings:

"A-Weighted Sound Level" means the Sound Level in decibels as measured on a Sound Level Meter using A-weighting network. The level is displayed in decibels and is designated either dB (A) or dBA.

"ABC License" means a license to serve alcoholic beverages issued by the State of California Department of Alcoholic Beverage Control.

"Ambient Music" means prerecorded, low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient Music does not include music played by a "disc jockey" or "DJ".

"Ambient Noise Level" means the composite noise from all sources near and far. In this context, the ambient noise level constitutes a normal or existing level of environmental noise at a given location and time.

"Ambient Television" means television programming routinely shown on broadcast, cable, satellite or other networks which now exist or which may be developed in the future which is inaudible and not visible from any portion of the exterior of the premises.

"Average Sound Level" means a Sound Level typical of the Sound Levels at a certain place during a given period of time, averaged by the general rule of combination for Sound Levels, as set forth in S1.4-1983, as amended from time to time, of the American National Standard Specifications for Sound Level Meters. Average Sound Level is also called equivalent continuous sound level (Leq).

"Cabaret License" means a Cabaret License issued pursuant to Chapter 8.09.014 as it existed before the revision of this Code by the enactment of this Chapter 8.09 Entertainment Establishments.

1 “Class I Entertainment Establishment” means a business with an ABC License offering
2 Entertainment to patrons that does not include Dancing by patrons of the Entertainment
Establishment.

3 “Class II Entertainment Establishment” means a business with an ABC License offering
4 Entertainment to patrons that includes Dancing by patrons of the Entertainment Establishment.

5 “Dance or Dancing” means to move with rhythmical steps or movement, usually to music
6 or an audible rhythm; except for any Dance that is regulated under Chapter 8.60 (performances
at adult businesses).

7 “Decibel” (dB) means a unit of measure of Sound Noise Level.

8 “Disturbing, Excessive or Offensive Noise” means (a) any Noise which constitutes a
9 nuisance involving discomfort or annoyance to persons of normal sensitivity residing in the area;
or (b) any Noise conflicting with the criteria or levels set forth in this Chapter.

10 “Entertainment” means any single event, a series of events, or an ongoing activity or
11 business, occurring alone or as part of another business, to which the public is invited or allowed
to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining
the attention of, or diverting or amusing patrons, including:

- 12 (a) Dancing by patron(s) to live or recorded music.
- 13 (b) The presentation of music played on sound equipment operated by an agent or
contractor of the Establishment, commonly known as “disc jockey” or “DJ”.
- 14 (c) The presentation of live music whether amplified or un-amplified.
- 15 (d) The presentation of music videos, music concerts or other similar forms of musical
entertainment from any source.
- 16 (e) Any amusement or event such as live music or other live performance which is
17 knowingly permitted by any Entertainment Establishment, including presentations by single or
multiple performers, such as hypnotists, pantomimes, comedians, song or dance acts, plays,
18 concerts, any type of contest; sporting events, exhibitions, carnival or circus acts, demonstrations
of talent or items for gift or sale; shows, reviews, and any other such activity which may be
attended by members of the public.

19 “Entertainment Establishment(s)” means any commercial business, except a business
20 entity possessing a valid Cabaret License or regulated by Chapter 8.60 of this Code, that is open
to the public wherein alcoholic beverages are served, is subject to licensing by State of California
Department of Alcohol Beverage Control and offers Entertainment to patrons.

21 “Entertainment License – means a license obtained from the Chief of Police pursuant to
22 the provisions of this Chapter for the purposes of operating an Entertainment Establishment.

23 “Manager” means a person, regardless of the job title or description, who has
24 discretionary powers to organize, direct, carry on, or control the operations of an Entertainment
Establishment, including a restaurant or bar. Authority to engage in one or more of the following
functions is prima facie evidence that a person is a Manager of the Entertainment Establishment:

- 25 (a) Hire or terminate employees;
 - 26 (b) Contract for the purchase of furniture, equipment, or supplies, except for the
occasional replenishment of stock;
 - 27 (c) Disburse funds of the business, except for the receipt of regularly replaced items
of stock;
- 28

1 (d) Make or participate in making policy decisions regarding operations of the
2 Establishment.

3 "Noise" includes Ambient Music, Ambient Television or Entertainment.

4 "Noise Level" has the same meaning as "Sound Level".

5 "On-sale" has the same meaning as California Business and Professions Code Section
6 23038.

7 "Responsible Beverage Service Training Course" means a training program recognized by
8 the California Department of Alcoholic Beverage Control for On-sale management and On-sale
9 professional services.

10 "Responsible Party" means any person who is physically at the Entertainment
11 Establishment and is any of the following:

- 12 (a) The person who own the Entertainment Establishment;
- 13 (b) The person in charge of the Entertainment Establishment;
- 14 (c) The person using the Entertainment Establishment under a special arrangement;
- 15 (d) An employee or agent of an owner or Manager of the Entertainment Establishment
16 when the owner or Manager is temporarily absent from the Entertainment Establishment;
- 17 (e) The Entertainment Establishment's Manager or on-site supervisor.

18 "Sound Level" means in Decibels, the weighted sound pressure level obtained by the use
19 of a Sound Level Meter and frequency weighing network as specified in S1.4-1983, as amended
20 from time to time, of the American National Standards Institute specifications for Sound Level
21 Meters. If the frequency weighting employed is not indicated, the A-weighting is implied.

22 "Sound Noise Level" has the same meaning as Sound Level.

23 "Sound Level Meter" means an instrument, including a microphone, an amplifier, a
24 readout, and frequency weighting networks for the measurement of sound levels, which meets or
25 exceeds the requirements pertinent for type S2A meters in S1.4-1983, as amended from time to
26 time, of the American National Standards Institute Specifications for Sound Level Meters.

27 **8.09.030 Entertainment License Required**

28 All Entertainment Establishments shall possess an Entertainment License.

8.09.040 Exemptions

The following types of activities are exempt from the provisions of this Chapter:

- 23 (a) Events for which a Special Event Permit or Park Facility Use Permit has been Issued
24 pursuant to this Code.
- 25 (b) Ambient Music.
- 26 (c) Ambient Television.
- 27 (d) Entertainment conducted in connection with a theme park.
- 28 (e) Any activity which is subject to a Special Use Permit or Park Facility Use Permit issued by
the City of Carlsbad.

8.09.050 No Renewal of Cabaret License

Any person or business entity holding a valid Cabaret License issued before _____, 2007 may continue with the operation of that business until such time as that annual Cabaret License expires or is revoked. Upon expiration or revocation of an annual Cabaret License, an application for an Entertainment License shall be submitted to the Chief of Police or designee pursuant to this Chapter if the business desires to continue serving alcoholic beverages and providing Entertainment to patrons.

The transferee or purchaser of a business holding an annual Cabaret License issued before _____, 2007 shall be required to apply for and obtain an Entertainment License, pursuant to this Chapter, within 30-days of the completion of the transfer or purchase of the business holding such annual Cabaret License if the transferee or purchaser desires to continue serving alcohol beverages and providing Entertainment to patrons.

8.09.060 Application/Modification Requirements

(a) Any person or business entity desiring to obtain an Entertainment License or modification shall submit a complete application to the Chief of Police or designee and pay an application fee pursuant to Section 8.09.070.

(b) The application shall be in a form approved by the Chief of Police.

(c) The application shall be filed:

(1) at least forty-five (45) days prior to the proposed operation of the Entertainment Establishment;

(2) at least forty-five (45) days prior to the expiration; or

(3) at any time for a modification.

(d) The application shall state the class of Entertainment (Class I or Class II) that the Entertainment Establishment will provide to patrons.

(e) The Entertainment License application shall include five (5) copies of a floor plan and five (5) copies of a site plan. The floor plan shall be a copy of the floor plan approved by the City Building and Fire Departments as part of a formal building permit process. The floor plan shall show all customer seating areas, performing stages or platforms, back-of-house areas, restroom facilities, and any proposed Dance areas if applying for a Class II Entertainment License. The floor plan shall clearly state the legal occupant load as established as part of the formal building permit process, and all exiting systems of the premises shall be clearly shown. No floor plan change, occupant load change, or other change of use can be approved as part of an application process for an Entertainment License.

(f) The site plan shall be drawn to scale with dimensions and show the building footprint and all surrounding grounds, including on site parking spaces. The application shall also include a copy of any City Land Use Permits (e.g. Conditional Use Permit, Redevelopment Permit, etc.) issued to the property owner or business entity.

8.09.070 Fees

A nonrefundable fee, as set forth in the City of Carlsbad Master Fee Schedule shall accompany each application for an Entertainment License. The Entertainment License fee shall be in addition to the business license fee required pursuant to Chapter 5.08 of this Code.

8.09.080 Approval/Denial/Modification of Entertainment License

(a) Upon completion of an investigation, the Chief of Police shall issue the License subject to Section 8.09.090, as applicable, unless it is found that:

(1) The application fee has not been paid.

(2) Applicant is less than twenty-one (21) years of age.

(3) The application does not conform to the provisions of this Chapter.

(4) The applicant has made a material misrepresentation in the application.

(5) The applicant or any of its owners, partners, officers or directors has had an Entertainment License application denied or Entertainment License revoked within five (5) years prior to the date of the pending application.

(6) The proposed Entertainment Establishment does not comply with all applicable laws, including but not limited to: health, zoning, building, and fire code requirements. Prior to granting a License, the Chief of Police or designee shall obtain certification from the Fire Chief, Planning Director or Housing and Redevelopment Director (if the property is located in the Redevelopment Area), and Building Official that the proposed use is in compliance with the land use and zoning provisions of the applicable Municipal Codes provisions and Village Redevelopment Master Plan and Design Manual (if applicable), and that the structures are suitable and safe for the proposed operation of an Entertainment Establishment.

(b) If the Chief of Police denies the application, the applicant shall be notified of the reasons for the denial in writing within forty-five (45) days after receipt of the application. However, failure to notify the applicant within the specified time period shall not constitute a basis for granting the License. An applicant denied an Entertainment License has a right to appeal the denial pursuant to Section 8.09.150 of this Chapter. If such a hearing is not requested within the proscribed time period, the denial shall be final.

(c) If a Conditional Use Permit, or any other permit or approval, except a Certificate of Occupancy, is required for the lawful operation of an Entertainment Establishment, the provisions of Chapter 8.09 shall be in addition to those other permits and entitlements. An Entertainment License cannot modify the terms of a Conditional Use Permit or any other permit or approval.

8.09.090 Entertainment License Standards and Conditions

(a) All Class 1 and Class II Entertainment Establishments shall operate in accordance with the following standards or conditions:

(1) Display of License. The Entertainment License shall be display on the premises in a conspicuous place so that law enforcement persons entering may readily see the Entertainment License. A copy of the floor plan approved with the Entertainment License shall be made available at all times at the request of any law enforcement officer, Fire Marshal or Deputy Fire Marshal.

(2) Hours of Operation. All Entertainment Establishments shall otherwise close and all patrons shall vacate the premises between 2:00 a.m. and 6:00 a.m. unless the Entertainment License is conditioned for additional hours of closure.

(3) Noise Restrictions. All Entertainment Establishments shall ensure that Entertainment provided after 10:00 p.m. is not audible as measured in accordance with Section 8.09.110. Between the hours of 10 p.m. and 7 a.m. no Entertainment Establishment may cause, permit or maintain Noise at a Sound Level to the extent that the one-hour average Sound Level exceeds 60 Decibels beyond the premises of the Establishment of which the Noise is produced. The Noise subject to these limits is that part of the total Noise at the specified location that is due solely to the action of said Responsible Party.

(4) Manager and Server Training. The following persons must complete a Responsible Beverage Service Training Course before the Entertainment Establishment may serve or sell alcohol:

(A) Every Manager must complete a Responsible Beverage Service Training Course within 90 days of hire, or by January 1, 2008, whichever is later.

(B) Every person who serves or sells alcoholic beverages for consumption by patrons on the premises of an Entertainment Establishment shall complete a Responsible Beverage Service Training Course within 90 days of hire, or by January 1, 2008, whichever is later.

(C) A list of all persons who have completed the training required by this section shall be maintained on the premises of the Entertainment Establishment and, together with the proof of such completion, shall be promptly provided upon request to any police officer for inspection.

(5) Maximum Occupant Load. The maximum number of persons in the Entertainment Establishment, other than employees, shall not, at any time, exceed the maximum occupant load as established by the Fire Marshal or the City Building Official.

(6) Disturbing the Peace and Disorderly Conduct. The Responsible Party shall make reasonable efforts to prevent the admission of any person whose conduct is described in California Penal Code Section 415 (fighting, loud noise, offensive words in public places) or PC 647 (disorderly conduct) inside the Entertainment Establishment or on any parking lot or surrounding area used by the Entertainment Establishment. The Responsible Party shall make reasonable efforts to remove from the Entertainment Establishment persons exhibiting such conduct.

(7) Maintaining Adequate Right of Way. The Responsible Party shall ensure that patrons queuing on the public sidewalk do not obstruct the right of way or sidewalk from vehicular or pedestrian access. The minimum clear access for sidewalks shall be maintained at forty four (44) inches.

(8) Orderly Dispersal. The Responsible Party shall cause the orderly dispersal of patrons from the vicinity of the Entertainment Establishment at closing time, and shall prevent patrons from congregating in the immediate vicinity of the Entertainment Establishment in a disorderly manner or permit patrons to congregate in any roadway or traffic lane in close proximity to the Entertainment Establishment.

(9) Obey all federal, state and local laws.

(b) In addition to the conditions set forth in Section 8.09.090(a) the Chief of Police may impose additional conditions in the following areas which shall be based on specific, articulated facts setting forth the necessity for the conditions:

(1) The days, hours and location of the business operation.

(2) Tenant improvements or other modifications to the property designed to prevent minors from readily obtaining alcohol.

(3) Requirements for additional soundproofing, or any other property or tenant improvements reasonably related to keeping the peace.

(4) Public peace and safety.

(5) Specific licensing qualifications and numbers of security personnel to be on duty during business hours.

8.09.100 Class II Entertainment Establishment Conditions

In addition to the conditions set forth in Section 8.09.090, the following conditions shall apply to all Class II Entertainment Establishments:

(a) Mandatory Security Guards. Security guard(s) shall be on duty at the premises at the ratio of one (1) security guard to one hundred (100) patrons. There shall be at least one (1) security guard on duty at all times the Class II Entertainment Establishment is allowing dancing. Additional security guards may be required pursuant to Section 8.09.090(b)(5). The security guards shall ensure compliance with the provisions of this Chapter, conditions placed on the Entertainment License and ABC License, and compliance with other state and local laws.

(b) Designation of Dance Floor.

(1) The Dance floor area shall be plainly marked and designated as the Dancing area.

(2) No Dancing shall be permitted outside the designated Dancing area.

(c) Seating and Dance Areas. Seating areas shall not be converted to Dance areas, unless the floor plan approved as part of the application process allows such conversion.

(1) During all hours which Dancing is permitted, no portion of the Dancing area shall be used for any purpose other than Dancing.

(d) Minors. No person under the age of twenty-one (21) years may be admitted on or inside the Entertainment Establishment after 10:00 p.m. if any alcoholic beverages are consumed, dispensed or sold on the premises, unless the minor is accompanied by and at all times under the direct and immediate supervision of a parent or legal guardian.

8.09.110 Sound or Noise Measurement

(a) Any Sound or Noise Level measurement shall be measured with a Sound Level Meter using the A-weighting and meter response pursuant to applicable manufacturer's instructions.

(b) The Sound Level meter shall be appropriately calibrated and adjusted as necessary by means of an acoustical calibrator of the coupler-type to assure meter accuracy within the tolerances set forth by S1.4-1983, as amended from time to time, of the American National Standards Institute Specifications for Sound Level Meters.

(c) For outdoor measurements, the microphone shall be not less than four (4) feet above the ground, at least four (4) feet distant from walls or other large reflecting surfaces and shall be protected from the effects of wind noises by the use of appropriate wind screens and the location selected shall be at any point of the affected property. In cases when the microphone must be located within ten (10) feet of walls or similar large reflecting surfaces, the actual measured distances and orientation of the sources, microphone and reflecting surfaces shall be noted and recorded. In no case shall a Noise measurement be taken within five (5) feet of the Noise source.

(d) The peak Decibel reading for a Noise with a fluctuating Sound Level (such as live or recorded music) shall be considered as the Noise Level for the entire cumulative period of Noise. Likewise, the time between repetitive intermittent Noises shall be included in the cumulative of the Noise.

8.09.120 Immediate Threat to Public Safety

The Chief of Police, Fire Marshal, or his/her designee may require the Responsible Party to cease all or part of the Entertainment Establishment's operations or Entertainment and disperse all patrons for a period of time up to and including the remainder of the Entertainment Establishment's daily operating hours whenever conduct by disorderly patrons reaches a magnitude that presents an immediate threat to the safety and well-being of the patrons or general public in the vicinity of the Entertainment Establishment.

8.09.130 Term of License

(a) The Entertainment License shall be valid for a term of three (3) years from the date of issuance and is not transferable. Suspension of an Entertainment License shall not extend the term of the Entertainment License.

(b) A change in ownership of the Entertainment Establishment shall require the new owner to pay a new application fee and secure a new Entertainment License from the Chief of Police in accordance with Section 8.09.080.

(c) An Entertainment License may be renewed by a new application subject to the same requirements stated herein for obtaining the initial Entertainment License, including payment of an application fee.

8.09.140 Revocation/Suspension for Violation

(a) The Chief of Police may issue a letter of intent to revoke or suspend an Entertainment License upon receiving satisfactory evidence that:

1 (1) The application for an Entertainment License contains incorrect, false, or
misleading information; or

2 (2) Ownership of the Entertainment Establishment has changed without the new
ownership securing a new Entertainment License from the Chief of Police; or

3 (3) The Entertainment Establishment has, within any twelve (12) month period, been
found criminally, civilly or administratively, or any combination thereof, to have violated three (3)
4 or more of the same provisions of this Chapter, or four (4) or more of any provisions of this
Chapter; or

5 (4) Employees of the Entertainment Establishment are engaged in conduct or
behavior to the extent that it constitutes a nuisance, including but not limited to complaints
6 registered with the State Alcoholic Beverage Control Board or the County Health Department.

7 (b) The Chief of Police shall provide written notice of the intent to revoke or suspend to the
holder of an Entertainment License by personal service, or by certified mail. The notice shall be
8 directed to the most current Entertainment Establishment address or other mailing address on file
with the Chief of Police for the Entertainment Establishment. The notice shall provide the effective
9 date of the revocation or suspension. No revocation or suspension shall be imposed on less than
thirty (30) days notice to the holder of the Entertainment License.

10 **8.09.150 Appeal Procedure**

11 (a) Any applicant or Entertainment Establishment aggrieved by denial, suspension or
12 revocation, or conditions of an Entertainment License may file, with the City Clerk, a written
Notice of Appeal to the City Manager ("Notice of Appeal") within ten (10) days of the decision by
13 the Chief of Police or designee. The Notice of Appeal shall specify:

14 (1) The name and address of appellant;

15 (2) The date of application;

16 (3) The date of denial, suspension or revocation or condition;

17 (4) The factual basis for the appeal.

18 (b) Upon receipt of a complete and timely filed Notice of Appeal, the City Manager shall
schedule a hearing and set forth in writing and deliver to the applicant or Licensee at the address
provided in the Notice of Appeal, by means of registered mail, certified mail or hand delivery, that
19 within a period of not less than five (5) days nor more than fourteen (14) days from the date of
the filing of the Notice of Appeal with the City Clerk, a hearing shall be conducted to determine
the existence of any substantial evidence which would refute the grounds for the denial,
20 suspension, or revocation or condition of a License. The hearing notification shall include the
date, time and place of the hearing.

21 (c) A hearing officer (Hearing Officer) appointed by the City Manager shall conduct the
hearing based upon the Notice of Appeal. The applicant or Licensee may have the assistance of
counsel or may appear by counsel and shall have the right to present evidence. In the event that
22 the applicant, Licensee, or counsel representing the applicant or Licensee, fails to present any
evidence at the hearing, the evidence of the existence of facts, which constitute grounds for the
23 denial, suspension, or revocation or condition of the Entertainment License shall be deemed
uncontested. Any issue not raised in the hearing is waived.

24 (d) Strict compliance with the California Evidence Code is not required at the hearing. Any
relevant evidence may be admitted and considered by the Hearing Officer if it is the sort of
evidence upon which responsible persons are accustomed to rely in the conduct of serious
25 affairs. Objections to evidence shall be noted and a ruling given by the Hearing Officer. A copy of
the recommendation of the Hearing Officer specifying findings of fact and the reasons for the
26 recommendation shall be furnished to the City Manager for consideration. The City Manager shall
notify the applicant or Licensee or counsel representing the applicant or Licensee of the decision
27 regarding the Appeal in writing as specified above within 10 days of the Hearing Officer's
28

1 recommendation and shall also inform the party against whom a decision is rendered of the right
2 to appeal to the City Council pursuant to this Chapter. Any decision rendered by the City Manager
which is not appealed within the specified time period for filing a notice to appeal to City Council
is final.

3 (e) Any applicant, Licensee or party aggrieved by a decision of the City Manager may appeal
4 to the City Council within ten (10) days of the date on which the decision of the City Manager was
made. Upon the filing of a written Notice of Appeal of City Manager's Decision to City Council
("Appeal to City Council") upon the City Clerk, the City Clerk shall schedule the Appeal to City
5 Council for review by the City Council as soon as practicable and advise the Police Chief who
shall transmit to the Clerk the complete record of the case.

6 (f) The City Clerk shall provide notice of the Appeal to City Council, along with the date, time
7 and location of the Appeal to City Council hearing to all parties to the appeal. The review by the
City Council is de novo; and the City Council shall determine that all issues not raised in the
Appeal to City Council are supported by substantial evidence. The City Council shall consider the
8 recommendations of the Police Chief and the Hearing Officer, the decision of the City Manager
and all other relevant documentary and oral evidence as presented to the Hearing Officer. The
9 City Council may affirm, modify, or reverse the action of the City Manager, and make such order,
as it deems appropriate and supported by substantial evidence including remand to the City
10 Manager with directions for further proceedings. Any action by the City Council shall be final and
conclusive; provided, however, that any action reversing the decision of the City Manager shall
11 be by the affirmative vote of at least three members of the City Council.

12 **8.09.160 Severability**

13 If any section, subsection, sentence, clause or phrase of the ordinance codified in this Chapter is
14 for any reason held to be invalid or unconstitutional by the decision of any court of competent
jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance
15 codified in this Chapter. The City Council declares that it would have passed the ordinance
codified in this Chapter and each section, subsection, sentence, clause, and phrase hereof,
16 irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or
phrases hereof be declared invalid or unconstitutional.

17 **8.09.170 Violation—Penalty**

18 (a) Any person who violates any of the provisions of this Chapter is guilty of an infraction,
19 except for the fourth and each additional violation of a provision of this Chapter within one year,
shall be a misdemeanor. Penalties for a violation of this chapter shall be as designated in Section
20 1.08.010 of this Code.

21 (b) In addition to any other remedy authorized by this Chapter, a violation of this Chapter may
be grounds for a revocation, suspension or denial of an Entertainment License.

22 EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption and the
23 City Clerk shall certify the adoption of this ordinance and cause it to be published at least once in
24 a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

25 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on
26 the ____ day of _____, 2007, and thereafter.

27 ///

1 ///

2 PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad
3 on the ____ day of _____, 2007, by the following vote, to with:

4 AYES:

5 NOES:

6 ABSENT:

7

8 APPROVED AS TO FORM AND LEGALITY

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10

RONALD R. BALL, City Attorney

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ATTEST:

CLAUDE A. LEWIS, Mayor

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LORRAINE M. WOOD, City Clerk

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